

(4) Certified copies of indictments, judgments, and sentencing actions; and

(5) Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the debarring official in 209.403.

**209.409 Solicitation provision and contract clause.**

Use the clause at 252.209–7004, Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country, in solicitations and contracts with a value of \$100,000 or more.

[63 FR 14837, Mar. 27, 1998]

**209.470 Military recruiting on campus.**

**209.470–1 Policy.**

(a)(1) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—

(i) Entry to campuses or access to students on campuses; or

(ii) Access to directory information pertaining to students.

(2) Section 541 of the National Defense Authorization Act for Fiscal Year 1996 (10 U.S.C. 983) provides that no funds appropriated or otherwise available to DoD may be obligated by contract or by grant, including a grant of funds to be available for student aid, to any institution of higher education that, as determined by the Secretary of Defense, has an anti-ROTC policy and at which, as determined by the Secretary, the Secretary would otherwise maintain or seek to establish a unit of the Senior Reserve Officer Training Corps, or at which the Secretary would otherwise enroll or seek to enroll students for participation in a unit of the Senior Reserve Officer Training Corps at another nearby institution of higher education. This prohibition applies to new contracts and all contract modifications. (See 243.105.) This prohibition shall cease to apply to that institution upon a determination by the Secretary

that the institution no longer has an anti-ROTC policy.

(b) Institutions of higher education that are determined under 32 CFR part 216 to have the policy or practice in paragraph (a)(1) or (a)(2) of this subsection shall be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration. (See FAR 9.404.)

(c) In cases where a determination is made under 32 CFR part 216 that specific subordinate elements of an institution of higher education, rather than the institution as a whole, have the policy or practice in paragraph (a)(1) or (a)(2) of this subsection, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

[61 FR 25408, May 21, 1996]

**209.470–2 Procedures.**

(a) Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with ineligible contractors.

(b) After a determination of ineligibility under 209.470–1(a)(1), departments and agencies shall make no further payments under existing contracts with the institutions, and shall initiate termination action.

[61 FR 25408, May 21, 1996]

**209.470–3 Contract clause.**

Use the clause at 252.209–7005, Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

[60 FR 13074, Mar. 10, 1995, as amended at 60 FR 51693, Nov. 30, 1995]

## PART 211—DESCRIBING AGENCY NEEDS

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## Department of Defense

## 211.270-1

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### Subpart 211.6—Priorities and Allocations

- 211.602 General.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 60 FR 61594, Nov. 30, 1995, unless otherwise noted.

#### 211.002 Policy

All systems acquisition programs in the DoD are subject to the acquisition streamlining policies and procedures in DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

#### 211.002-70 Contract clause.

Use the clause at 252.211-7000, Acquisition Streamlining, in all solicitations and contracts for systems acquisition programs.

### Subpart 211.2—Using and Maintaining Requirements Documents

#### 211.201 Identification and availability of specifications.

(a) The DoD index of data item descriptions is DoD 5010.12-L, Acquisition Management Systems and Data Requirements Control List (AMSDDL).

(b) Also, furnish data item descriptions which are not listed in the AMSDDL, except when it is not feasible, e.g., documents are bulky or only a limited number of copies are available at the contracting activity.

(d) The AMSDDL, all unclassified specifications and standards listed in the DODISS, and data item descriptions listed in the AMSDDL may also be purchased from the Standardization Docu-

ments Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094. Include with the letter or DD Form 1425—

- (i) The requester's customer number; and
- (ii) Complete return mailing address, including any "mark for" instructions.

#### 211.204 Solicitation provisions and contract clauses.

(c) When contract performance requires use of specifications and standards which are not listed in the DODISS and data item descriptions which are not listed in the AMSDDL, use provisions, as appropriate, substantially the same as those at 252.211-7001, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents, and 252.211-7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

#### 211.270 Brand name or equal purchase descriptions.

##### 211.270-1 Policy.

When a "brand name or equal" purchase description is used—

- (a) The purchase description—
  - (1) Should include a complete common generic identification of the item.
  - (2) Should reference all known acceptable brand name products, to include—
    - (i) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known); and
    - (ii) Model, make, or catalog number for each, and identity of the commercial catalog in which it appears.
  - (3) May, if necessary to adequately describe an item, use a commercial catalog description or an extract from the catalog. Ensure that a copy of each catalog referenced (except parts catalogs) is available at the contracting office for review by offerors.
  - (4) Should give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially

the same manner as the brand name product.

(5) Must identify those salient physical, functional, or other characteristics which are essential to the needs of the Government.

(b) The solicitation—

(1) Shall be at or below the simplified acquisition threshold in FAR part 13.

(2) May require bid samples for “or equal” offers, but not for “brand name” offers.

(3) Must provide for full consideration and evaluation of “or equal” offers against the salient characteristic specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(4) Must include the following immediately after the item description—Offering:

Manufacturer's Name \_\_\_\_\_ Brand \_\_\_\_\_  
Model or Part No. \_\_\_\_\_

(c) The contract shall—

(1) Not exceed the simplified acquisition threshold in FAR part 13.

(2) Identify, or incorporate by reference an identification of the specific products the contractor is to furnish. Include any brand name, make or model number, descriptive material, and any modifications of brand name products specified in the offer.

#### **211.270-2 Solicitation provision.**

(a) When a brand name or equal purchase description is included in a solicitation at or below the simplified acquisition threshold in FAR part 13, use the provision at 252.211-7003, Brand Name or Equal.

(b) When component parts of an end item are described by brand name or equal purchase descriptions and application of the provision at 252.211-7003 to some or all of the components is impracticable, either do not use the provision or limit its application to specified components.

#### **211.271 Elimination of use of class I ozone-depleting substances.**

(a) *Contracts.* No DoD contract may include a specification or standard that

requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or member of the Senior Executive Service of the requiring activity in accordance with Section 326, Public Law 102-484 (10 U.S.C. 2301 (repealed) note).

(b) *Modifications.* (1) Contracts awarded before June 1, 1993, with a value in excess of \$10 million, that are modified or extended (including option exercise) and, as a result of the modification or extension will expire more than one year after the effective date of the modification or extension, must be evaluated in accordance with agency procedures for the elimination of ozone-depleting substances.

(i) The evaluation must be carried out within 60 days after the first modification or extension.

(ii) No further modification or extension may be made to the contract until the evaluation is complete.

(2) If, as a result of this evaluation, it is determined that an economically feasible substitute substance or alternative technology is available, the contracting officer shall modify the contract to require the use of the substitute substance or alternative technology.

(3) If a substitute substance or alternative technology is not available, a written determination shall be made to that effect at a level no lower than a general or flag officer or member of the Senior Executive Service of the requiring activity.

#### **211.272 Alternate preservation, packaging, and packing.**

Use the provision at 252.211-7004, Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

### **211.273 Substitutions for military or Federal specifications and standards.**

#### **211.273-1 Definition.**

*SPI process*, as used in this section, is defined in the clause at 252.211-7005, Substitutions for Military or Federal Specifications and Standards.

[62 FR 44224, Aug. 20, 1997]

#### **211.273-2 Policy.**

(a) Under the Single Process Initiative (SPI), DoD accepts SPI processes in lieu of specific military or Federal specifications or standards that specify a management or manufacturing process.

(b) DoD acceptance of an SPI process follows the decision of a Management Council, which includes representatives from the Defense Contract Management Command, the Defense Contract Audit Agency, and the military departments.

(c) In procurements of previously developed items, SPI processes that previously were accepted by the Management Council shall be considered valid replacements for military or Federal specifications or standards, absent a specific determination to the contrary (see 211.273-3(c)).

[62 FR 44224, Aug. 20, 1997]

#### **211.273-3 Procedures.**

(a) Solicitations for previously developed items shall encourage offerors to identify SPI processes for use in lieu of military or Federal specifications and standards cited in the solicitation. The solicitation shall require an offeror proposing to use an SPI process to include, in its response to the solicitation, documentation of the Government acceptance of the process.

(b) Contracting officers shall ensure that—

(1) Concurrence of the requiring activity has been or will be obtained for any proposed substitutions prior to contract award; and

(2) Any necessary additional information regarding the SPI process identified in the proposal is obtained from the cognizant administrative contracting officer.

(c) Any determination that an SPI process is not acceptable for a specific procurement shall be made at the head of the contracting activity or program executive officer level. This authority may not be delegated.

[62 FR 44224, Aug. 20, 1997]

#### **211.273-4 Contract clause.**

Use the clause at 252.211-7005, Substitutions for Military or Federal Specifications and Standards, in solicitations and contracts exceeding the micro-purchase threshold, when procuring previously developed items.

[62 FR 44224, Aug. 20, 1997]

### **Subpart 211.5—Liquidated Damages**

#### **211.504 Contract clauses.**

(b) Use the clause at FAR 52.211-12, Liquidated Damages—Construction, in all construction contracts exceeding \$500,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of \$500,000 or less is optional.

### **Subpart 211.6—Priorities and Allocations**

#### **211.602 General.**

DoD implementation of the Defense Priorities and Allocations System is in DoDI 4400.1, Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuation of Related Manuals.

## **PART 212—ACQUISITION OF COMMERCIAL ITEMS**

### **Subpart 212.2—Special Requirements for the Acquisition of Commercial Items**

Sec.

212.211 Technical data.

### **Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.